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THE SUPREME COURT'S CYAN DECISION: IMPLICATIONS FOR SECURITIES CLASS ACTIONS

In the Cyan case the Supreme Court held that SLUSA did not bar state courts from hearing 1933 Act class actions. The authors discuss the case and its aftermath. They then turn to post-Cyan litigation strategies, including stays based on duplicative actions, PSLRA requirements, jurisdictional issues, pleading standards, and corporate forum selection clauses.

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On March 20, 2018 the United States Supreme Court decided that the Securities Litigation Uniform Standards Act of 1998 (“SLUSA”) does not deprive state courts of concurrent jurisdiction over class actions alleging violations of the Securities Act of 1933 and that such actions are not removable to federal court. In a unanimous decision authored by Justice Kagan, the Court held that state courts continue to enjoy jurisdiction over 1933 Act class actions, SLUSA notwithstanding, and that removal of such actions to federal court is impermissible. The decision serves as a boon to the plaintiffs’ bar and may well give rise to a surge in 1933 Act claims being filed in state court, where key substantive and procedural limits on securities class actions imposed by the Private Securities Litigation Reform Act of 1995 (“PSLRA”) do not apply.

Cyan, Inc. presented a familiar fact pattern.¹ Respondents were three pension funds and an individual who invested in Cyan, Inc., a telecommunications company that went public in 2013. After Cyan’s stock price fell the following year, the investors brought suit in

¹ *Cyan, Inc. v. Beaver Cnty. Employees Ret. Fund*, 138 S.Ct. 1061 (2018).

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California state court on behalf of a putative class, alleging that Cyan’s registration statement and prospectus issued in connection with its IPO contained material misstatements and omissions in violation of Section 11 of the 1933 Act. The investors did not allege any state law claims. Cyan promptly filed a motion to dismiss for lack of subject matter jurisdiction, arguing that SLUSA had stripped state courts of concurrent jurisdiction with respect to “covered class actions.” After the trial court denied the motion and the California appellate courts declined to review the ruling, Cyan filed a petition for certiorari, which the Supreme Court granted on June 27, 2017. The stage was set to resolve conflicting opinions whether SLUSA deprived state courts of concurrent jurisdiction over covered class actions asserting only 1933 Act claims.²

In a strongly worded opinion parsing both SLUSA’s statutory language and legislative history, the Court held

² Compare *Luther v. Countrywide Fin. Corp.*, 195 Cal. App. 4th 789, 797–98, (Cal. Ct. App. 2011) (state courts retain jurisdiction over 1933 Act actions), with *Knox v. Agria Corp.*, 613 F. Supp. 2d 419, 425 (S.D.N.Y. 2009) (state courts lack jurisdiction over 1933 Act actions).

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